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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room 204
Washington, DC 20554

Re: Bell Canada Petition for Declaratory Ruling,
IB Docket No. 98-148, Public Notice DA 99-2981

Dear Ms. Salas:

AT&T Corp. ("AT&T") provides the following comments to clarify the record of this proceeding in response to the Reply to Opposition of AT&T Corp. filed by Bell Canada on February 3, 2000.

Bell Canada indisputably remains a dominant carrier with market power in Canada by virtue of its control of virtually the entire local access market within its franchise areas -- which now cover no fewer than six Canadian provinces following its recent acquisition of Aliant. Bell Canada's share of long-distance and international calls is at least 65 percent in those areas, approximately 86 percent in the provinces served by Aliant, and likely exceeds 50 percent nationwide. Bell Canada's proposed acquisition of Teleglobe would also make it by far the largest international carrier in Canada. Nor is there any foundation to Bell Canada's claims that the Canadian regulatory regime protects U.S. carriers from abuse of Bell Canada's market power, because there is a notable absence in Canada of adequate regulatory safeguards to prevent Bell Canada from engaging in anticompetitive conduct.

Bell Canada also fails to acknowledge the full effect of any removal of Bell Canada from the Commission's "List of Foreign Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets." (*See* FCC Public Notice, DA 99-809, rel. Jun. 18, 1999.) Contrary to Bell Canada's Reply (p. 2, n.1), it is not correct that "the grant of Bell Canada's Petition would only lift [the Section 43.51] contract filing requirement for U.S. carriers with termination arrangements with Bell Canada." In fact, the Commission finding of non-dominance sought here by Bell Canada also would (1) remove the "No Special Concessions" rule prohibiting U.S. carriers from accepting special concessions from Bell Canada; and (2) allow Bell

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Canada to establish U.S. affiliates -- such as the affiliation with Teleglobe USA that would result from Bell Canada's proposed acquisition of Teleglobe USA's Canadian parent -- without complying with the dominant carrier rules.

The no special concessions rule continues to apply to all dominant foreign carriers on routes where the ISP is removed, apart from requirements relating to the settlement of traffic, and dominant carrier rules apply to all U.S. affiliates of foreign dominant carriers, including where regulatory safeguards may exist in the foreign market. Because of Bell Canada's increasing market power in Canada, any removal of these key safeguards would adversely affect U.S. carriers. The Commission should deny Bell Canada's requested relief, and continue to treat Bell Canada and its affiliates no differently than other foreign dominant carriers.

1. **Bell Canada is Increasing Its Market Power In Canada Through Its Acquisition of Aliant and Proposed Acquisition of Teleglobe.**

AT&T's Opposition (filed Jan. 19, 2000) demonstrated that Bell Canada indisputably has market power in Canada resulting from (1) its control of at least 95 percent of local access facilities in its local franchise territory, comprising most of Ontario and Quebec, Canada's two most populous provinces, (2) its control of two additional incumbents, Northwestel and Telebec, both of which continue to hold legal monopolies in local services, and (3) its substantial share of the Canadian international and long-distance market, including approximately 65 percent of the international and long-distance calls originating in its local franchise area.

Since AT&T filed its Opposition, Bell Canada has announced two transactions further consolidating its dominance of the Canadian telecommunications market. First, on January 27, Bell Canada announced that it now controls Aliant, the local service provider in Canada's four Atlantic provinces -- thus making Bell Canada the incumbent local service provider in no fewer than six Canadian provinces, as well as in the areas served by Northwestel and Telebec, with control of more than 95 percent of the local access facilities in those areas. (*See, e.g., BCE Announces Final Results of Offer to Aliant Shareholders*, Canada Newswire, Jan. 27, 2000.) Second, on February 15, 2000, Bell Canada announced an agreement to acquire100 percent control of Teleglobe, which would make Bell Canada by far the largest international carrier in Canada. (*See, e.g., BCE to Acquire remainder of Teleglobe for C$9.65 Billion*, Canada Newswire, Feb. 15, 2000.)

The Aliant acquisition extends Bell Canada's local bottleneck to include four additional provinces and also further consolidates Bell Canada's control of the Canadian domestic long-distance market. As previously shown by AT&T (p. 8), Aliant controls approximately 86 percent of the domestic long-distance and international calls originating in its franchise area, while Bell Canada already controls approximately 65 percent of the domestic long-distance and international calls originating in its Ontario and Quebec franchise area, and also provides nationwide long-distance services in Canada through its Bell Nexxia affiliate. Significantly, Bell

Canada's Reply offers no rebuttal to AT&T's demonstration (pp. 8-9) that control of Aliant by Bell Canada likely raises Bell Canada's nationwide long-distance and international market share above 50 percent.[1] Thus, Bell Canada fails to carry its burden of demonstrating that it possesses less than 50 percent market share in the inter-city services or facilities market in Canada.[2]

2. Bell Canada Unquestionably Has Market Power By Virtue of Its Extensive Local Bottleneck.

Bell Canada is also unable to show that it lacks market power in the local access market in Canada, where it now controls more than 95 percent of local access facilities in six provinces. There is no substance to its claim (p. 4) that the relevant local access market for purposes of the 50 percent presumption is "the national market in Canada, not just certain Canadian provinces." Under Bell Canada's reasoning, no local monopoly carrier controlling less than 50 percent of the local access lines in any country would ever possess market power, which is plainly wrong. As the Commission stated in the *Foreign Participation Order*, "[w]e recognize that, for purposes of identifying the relevant geographic market for inter-city and local access facilities, it may be appropriate in some instances to examine a discrete geographic region rather than the national market of a foreign country."[3]

Notwithstanding Bell Canada's misplaced assertion to the contrary (p. 4), Commission precedent clearly treats the local franchise area as the relevant market for these purposes. *Cable & Wireless*, 14 FCC Rcd. 1863 (1998) is not "inapposite" but is squarely on point as it found the control of local access bottleneck facilities in a single region of China by C&W's affiliate in China to require dominant carrier regulation of C&W's services "to all of China." (*Id.* at 1869 (emphasis added).) This was because of, among other reasons, the affiliate's "dominant position in a market that generates such a significant portion of China's international traffic" and "the overall volume of international traffic coming from" the relevant region in China. Those concerns are directly applicable here, where Bell Canada controls more than 95 percent of local access lines in six Canadian provinces, including Canada's two most populous

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1 Instead, Bell Canada resorts (p. 7) to mischaracterization of AT&T's Opposition by contending that AT&T "does not dispute" Bell Canada's Canada-U.S. market share as being "in the 40 percent range." AT&T does dispute these figures, as described above.

2 *See Foreign Participation Order*, 12 FCC Rcd. 23891, 23961 (1997) (carrier seeking to use the under-50 per cent market share presumption "must file data with the Commission to substantiate that claim for the relevant input markets on the foreign end of the route").

3 *Id.* at 23953.

provinces, Ontario and Quebec, which generate more than 60 percent of Canada's international traffic.[4]

Further, where the incumbent controls such extensive local bottlenecks, it is irrelevant that U.S. carriers may enter into agreements with "any one of dozens of competing Canadian interexchange carriers," as Bell Canada contends (p. 6), because all of those interexchange carriers must originate and terminate most of their traffic on Bell Canada's local access facilities. Continued classification of Bell Canada as a foreign carrier with market power is accordingly required to address the clear potential for abuse in such circumstances.

3. Bell Canada Incorrectly Claims That Canada Provides Similar Competitive Safeguards to the U.S.

Bell Canada's remaining arguments are also meritless. There is no inconsistency between the Commission's decision to treat Bell Operating Companies as non-dominant in their provision of U.S. international services, while treating foreign carriers like Bell Canada with bottleneck local facilities as dominant. (*See* Bell Canada, p. 4, n.4.) Bell Canada confuses the different safeguards that address market power at the foreign end of an international route and market power at the U.S. end of a route. As the Commission explained in the *Foreign Participation Order*, different safeguards apply to carriers with market power at the U.S. end because "our domestic rules are 'generally designed to prevent a carrier from raising its prices by restricting its output rather than to prevent a carrier from raising its prices by raising its rivals' costs.'"[5]

The Commission determined that Bell Operating Company long-distance affiliates should be treated as non-dominant based on its finding that they would not have the ability to raise price above competitive levels by restricting their output. (*See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, 12 FCC Rcd. 15754 (1997).) In this

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4 Equally misplaced is Bell Canada's attempt (p. 5, n.5) to dilute its dominance of local access services in Canada by expanding this market to include wireless services. The Commission has made clear that wireless service does not currently compete with wireline local exchange services. *See Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Dkt. No. 98-121, Memorandum Opinion and Order, rel. Oct. 13, 1998, FCC 98-271, ¶ 25. Therefore, the relevant market for determining whether incumbent local wireline carriers have sufficient market power to affect competition adversely is confined to wireline facilities.

5 *Foreign Participation Order*, 12 FCC Rcd. at 23987.

regard, the Commission noted that the fact that "each BOC interLATA affiliate initially will have zero market share" in the provision of in-region long-distance services "suggests that the affiliate will not initially be able to raise price by restricting its output." (*Id.* at ¶ 96.) Moreover, that Commission finding was also premised on the existence in the U.S. of extensive safeguards preventing the abuse of local bottleneck facilities by the Bell Operating Companies that have no parallel in Canada -- contrary to Bell Canada's contention (pp. 6-7) that "quite similar" competitive safeguards exist "on both sides of the border."

Unlike the approach taken in the U.S. with the 1984 divestiture of AT&T's former local bottleneck facilities, the prohibition on the provision of in-region long-distance and international services by the Bell Operating Companies before they satisfy the local competition requirements of Section 271 of the Telecommunications Act of 1996, statutory requirements for the provision of those services through separate affiliates once they satisfy those requirements, and further safeguards such as the Commission's affiliate transaction rules, Canada has required no divestiture by Bell Canada and other incumbent local carriers and does not require the provision of competitive services through separate affiliates.

In further contrast, the Canadian regulator, the CRTC, granted Bell Canada and all the former regional monopolies regulatory forbearance in domestic long-distance services in 1997, notwithstanding their continued control of bottleneck local termination facilities, their 70 percent share of the domestic long-distance market and "the absence of ubiquitous, competitor-owned transmission facilities across Canada."[6] The forbearance decision ended prior approval requirements for long-distance tariffs and rates and also removed the price floor preventing anticompetitive pricing of long-distance services. In 1998, the CRTC went even further and allowed Bell Canada and the other former regional monopolies to bundle their local monopoly services with competitive long-distance services without sufficient safeguards to prevent the cross-subsidization of their competitive services with monopoly revenues.[7]

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6 *See* CRTC, *Forbearance – Regulation of Toll Services Provided by Incumbent Telephone Companies*, Telecom Decision 97-19, Dec. 18, 1997, ¶ 42. In contrast, AT&T was found non-dominant in the U.S. more than ten years after it had lost control of any bottleneck local termination facilities, with a 60 percent share of the domestic long-distance market, and when facing "intense rivalry" from three other U.S. carriers with nationwide facilities-based networks, dozens of regional facilities-based carriers and several hundred resellers. *See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd. 3271(1995) at ¶¶ 68, 70, 72.

7 *See* CRTC, *Joint Marketing and Bundling*, Telecom Decision 98-4, Mar. 24, 1998. The CRTC required regional monopolists to cost bundled local residential access services at tariffed rates and competitive services at incremental costs (the so-called "imputation" test). But in the absence of an

(footnote continued on following page)

Following the Forbearance decision and the adoption of price-cap regulation, Canada now seeks to prevent the shifting of costs from competitive to monopoly services and other forms of anticompetitive cross-subsidization solely through the tariffing and partial price-cap regulation of local services, the imputation test for bundled services and inadequately policed accounting rules[8] -- which remove neither the incentive nor the ability to misallocate costs.

Canada's inadequate safeguards are further demonstrated by the Carrier Access Tariff, which is erroneously claimed by Bell Canada (p. 6) to "ensure[] that the incumbent carriers pay access charges on a basis comparable to their competitors." In fact, Bell Canada and the other former regional monopolists are not required to "pay" access charges, which are far above cost, but merely to attribute them.[9] However, attribution does not provide any meaningful competitive safeguard in the absence of any requirement in Canada for the provision of international and long-distance services through a separate affiliate, and in the absence of any requirement for the filing or cost justification of international and long-distance rates following the Forbearance decision.

The inadequacy of Canada's competitive safeguards is fully demonstrated by the continuing dominance of Canada's local and long-distance markets by the vertically integrated regional monopolists, the increasing profitability of these carriers notwithstanding their low prices in the domestic long-distance market, and the losses experienced by their competitors. Since the CRTC's Forbearance and Bundling decisions, Bell Canada and the other regional monopolists have offered long-distance rates that allow little, if any, margin when matched by competitive carriers, and consequently the regional monopolists are now increasing their long-distance market share. Following those decisions, AT&T Canada, the largest competitive carrier in Canada, has exited the residential long-distance business altogether and

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effectively competitive local services market, which has not developed in Canada, or the availability of local services to competitive carriers at wholesale rates, which is not required by the CRTC, competitive carriers cannot match the regional monopolists' bundled service prices without foregoing all profit.

8 Since 1997, there has been no requirement in Canada for public disclosure of the allocation of costs.

9 *See* Bell Canada Carrier Access Tariff, CRTC 7516, Item 40.4(e). *See also, e.g.,* Letter dated Jan. 28, 2000 to Ms. Ursula Menke, Secretary General, CRTC, from Ms. Teresa Muir, Director, Regulatory Affairs, Bell Canada, Attachment at 5 (demonstrating that Bell Canada's direct connection charge is far above cost.).

another major competitor, Sprint Canada, is now facing financial difficulties -- demonstrating that competitive realities in Canada are very different from the pro-competitive environment that Bell Canada seeks to portray (p. 7).

4. Dominant Carrier Classification of Bell Canada Provides Continued Application of the 'No Special Concessions' and Dominant Carrier Rules.

Bell Canada repeatedly contends in its Reply (p. 3) that "the sole consequence" of the relief sought here would be to remove "additional regulation" from its "U.S. carrier correspondents" (*i.e.*, the Section 43.51 filing requirement). In fact, a finding of nondominance here would also remove other critical Commission safeguards protecting unaffiliated U.S. carriers from the discrimination in which Bell Canada may continue to engage for as long as it controls bottleneck facilities in Canada.

First, a Commission finding that Bell Canada is without market power would remove the "No Special Concessions" rule prohibiting U.S. carriers from accepting special concessions from Bell Canada. The Commission specifically found last year in the *ISP Reform Order* that the no special concessions rule continues to apply to arrangements with foreign dominant carriers on routes like the U.S.-Canada route where the ISP is removed. The Commission made this determination because "there is still a risk of anticompetitive conduct for arrangements with foreign carriers with market power, even on routes where we remove the ISP." (*1998 Biennial Review, Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket No. 98-148, rel. May 6, 1999 ("*ISP Reform Order*"), ¶ 86 (emphasis added).)

While the no special concessions rule does not apply to rates, terms and conditions governing the settlement of international traffic on routes where the ISP is removed, it continues to apply in all other respects. (*Id.*, ¶ 85; 47 C.F.R. Section 63.14(c).) It thus ensures that Bell Canada may not abuse its local bottleneck by according preferential treatment concerning, among other things, "services, facilities or functions" necessary for the provision of basic services, including "technical specifications, functional capabilities, or other quality and operational characteristics, such as provisioning and maintenance times" relating to interconnection. (*Id.*)

Second, any finding of nondominance here would allow Bell Canada to establish U.S. affiliates -- and control Teleglobe USA pursuant to its recently announced proposed acquisition of Teleglobe -- while avoiding any requirement for compliance with the Commission's dominant carrier rules, which facilitate the detection of any preferential treatment provided by a foreign dominant carrier like Bell Canada to an affiliated U.S. carrier. The Commission determined in the *Foreign Participation Order* that dominant carrier safeguards are required to address the competitive concerns presented by affiliations with foreign dominant carriers notwithstanding the existence of competition at the foreign end of the route. It concluded that "the removal of foreign entry barriers alone will be insufficient to prevent foreign carriers with market power from seeking to leverage their market power into the U.S. market."[10]

For the above-described reasons, the Commission should deny Bell Canada's attempt to avoid these key competitive safeguards and affirm that Bell Canada should continue to be treated under Commission rules like all other foreign dominant carriers.

Respectfully submitted,

James J. R. Talbot /ha

cc: Rebecca Arbogast, International Bureau (by hand)
David Krech, International Bureau (by hand)
Gregory Staple, Counsel to Bell Canada (by U.S. mail).

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10 *Foreign Participation Order*, 12 FCC Rcd. at 23998.